



US Army Corps
of Engineers.

Public Notice

Regulatory Branch
333 Market Street
San Francisco, CA 94105-2197

NUMBER: 240101
RESPONSE REQUIRED BY:

DATE: 8 September 1999
8 October 1999

PROJECT MANAGER: Ed Wylie

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Proposed Regional General Permit for Repair and Protection Activities in Emergency Situations

A. INTRODUCTION: The San Francisco District of the Army Corps of Engineers is proposing to issue a new Regional General Permit (RGP) which will allow fill discharges into waters of the United States within the District for repair or protection activities in emergency situations. This proposal is being processed under the provisions of Section 404 of the Clean Water Act of 1972 (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

B. BACKGROUND: The San Francisco District previously published a Public Notice (PN 24010) dated October 30, 1998 on this subject. Based on the comments we received on that initial proposal, we have decided to base this revised emergency RGP on the permit developed by the Los Angeles District so that Corps activities in the State's coastal areas would be processed similarly. Particular concerns about our initial proposal centered around restrictions on the definition of an "emergency". Therefore, we have restructured our proposed RGP to reflect the need for local input as to when an emergency exists. While an Emergency Declaration by the Governor or the President is not required, **an emergency situation is present where there is a sudden, unexpected occurrence involving a clear and imminent threat to life or property demanding immediate action to prevent or mitigate loss of, or damage to life, health, property or essential public services (i.e., a situation that could potentially result in an unacceptable hazard to life or a significant loss of property if corrective action requiring a permit is**

not undertaken immediately). The agencies were also concerned about accurate and consistent notification regarding the project details. Therefore, the Corps will send out project descriptions to the agencies. Finally, formal Corps notification of project approval will still be a prerequisite to starting work.

Proposed Activity: Therefore, the District proposes to establish an RGP for emergency actions to provide an expedited response to public agencies and private parties for necessary repair and protection measures which require fill activities in waters of the United States, including wetlands, pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, where there is an imminent threat to life or property.

Public Input: Interested parties are hereby notified that the San Francisco District is considering establishing an RGP for the activity described herein. The Corps of Engineers is soliciting comments from the public, Federal, State, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed action. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered and threatened species or species proposed for listing as endangered or threatened, historic properties, water quality, general environmental effects, and the other public interest factors listed below. Comments are

used in the preparation of an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed action.

Interested parties are invited to provide their views on the proposed action, which will become a part of the record and will be considered in the decision. Comments should be mailed or sent electronically to the District at the addresses indicated at the top of Page 1.

Public Hearing: Any person may request, in writing, within the comment period specified in this Notice, that a public hearing be held to consider this application. Requests for public hearing shall state with particularity the reasons for holding a public hearing.

Evaluation Factors: The decision whether to issue this RGP will be based on an evaluation of the probable impacts including cumulative impacts of the proposed action on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors, which may be relevant to the proposal, will be considered, including the cumulative effects thereof. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people. In addition, if the actions potentially considered under this proposal would discharge dredged or fill material, the evaluation of the activity will include application of the Environmental Protection Agency (EPA) Guidelines (40 CFR 230) as required by Section 404 (b)(1) of the Clean Water Act.

C. PRELIMINARY REVIEW OF SELECTED FACTORS:

EIS Determination: A preliminary determination has been made that an environmental impact statement is not required for the proposed action.

Water Quality: Applicants will be required to obtain water quality certification, under Section 401 of the Clean Water Act, from the appropriate California Regional Water Quality Control Board or the EPA for most tribal lands. Section 401 requires that any applicant for a Section 404 permit provide proof of water quality certification to the Corps of Engineers prior to utilization of any Section 404 permit. For the purpose of this proposed RGP, it will be the responsibility of the applicant to acquire Section 401 certification or waiver thereof from the appropriate agency prior to conducting their project. Due to often limited time constraints with emergency actions, the applicant will not be required to provide prior proof to the Corps if such an action would result in undue harm to life or property. However, the applicant will be required to provide proof of Section 401 certification or waiver upon completion of the project unless the Corps is already aware that a particular project, class of projects, or projects in a particular area described by the RWQCB or EPA have received a Section 401 certification or waiver.

Coastal Zone Management: For those projects in or affecting the coastal zone, the Federal Coastal Zone Management Act requires that the applicant obtain concurrence from the California Coastal Commission (CCC) or the Bay Conservation and Development Commission (BCDC) that the project is consistent with the State's Coastal Zone Management Plan (CZMP). Although projects may receive approval under an approved Local Coastal Plan, Federal consistency requirements may not be satisfied; it is intended that corrective measures will comply with and will be conducted in a manner that is consistent with the CZMP. Due to often limited time constraints with emergency actions, the applicant will not be required to provide prior proof to the Corps if such an action would result in undue harm to life or property. However, the applicant would be required to provide proof of consistency upon completion of the project unless the Corps is already aware that a particular

project, class of projects, or projects in a particular area described by the CCC or BCDC have received such determinations or waivers.

Cultural Resources: Given that the majority of emergency activities involving flood events that potentially endanger life or property are located in what are now or what were in the past active floodplains, or are threatened by an active period of erosion, cultural resources that may be present have low potential for complete integrity. Historic disturbances probably occurred to such a degree that emergency corrective measures would not further endanger the resource. The position of the District Engineer is that most cultural resources that may be impacted through actions authorized under this RGP would already be impacted through emergency events, and that further damage through authorized actions would probably be considered not adverse. If cultural sites do exist, those portions immediately adjacent to flood channels are often disturbed. In fact, bank stabilization may result in site protection, and therefore would provide a beneficial effect. The District Engineer is seeking a "no effect" determination and hereby requests the State Historic Preservation Officer's input on the proposed action.

Endangered Species: Section 7 of the Endangered Species Act (ESA) of 1973, as amended, contains provisions for consultation in the event of emergencies that threaten human welfare or property. The Corps, U.S. Fish and Wildlife Service (F&WS), and National Marine Fisheries Service (NMFS) will establish local procedures to expedite coordination among the agencies during emergency situations. In brief, if the Corps determines that emergency authorization is warranted, Corps staff will contact, by telephone and/or facsimile transmission, specific personnel from the Service(s) to determine if listed species or designated critical habitat may be present and, if so, what actions could be taken during the emergency response to minimize the effects of the response on the listed species or designated critical habitat. These recommended measures will be provided by the Corps to the applicant seeking emergency authorization. As a requirement of the emergency authorization's conditions, the applicant would provide a written report to the Corps which describes the emergency, a justification of the emergency response, and an

evaluation of the response to and the effects of the emergency on the listed species and their habitats. This information would be provided to the Corps at the conclusion of the emergency. **THIS REPORTING REQUIREMENT IS NOT DISCRETIONARY.** The Corps has additional responsibilities to ensure compliance with the ESA. These reports are a critical part of such compliance. Failure to provide timely reports following responses to emergency situations where threatened or endangered species are involved would be considered non-compliance with permit conditions and would be considered a violation pursuant to regulations at 33 CFR Part 326.4(d). In addition to the above information, the Corps will require that applicants provide a map of the affected areas and photographs of the emergency area prior to (if possible) and after the emergency action.

At the conclusion of the emergency, the Corps and the Service(s) would complete formal consultation on the effects of the emergency action on listed species, or designated critical habitat, as required by Section 7 of the ESA. The Corps and Service(s) will also use these procedures to consider the effects of emergency response actions on species that are proposed for listing under the ESA.

D. PROPOSED ACTIVITY FOR WHICH A PERMIT IS REQUIRED: The Corps proposes to establish an RGP for emergency actions to provide a rapid response to public agencies and private parties for emergency protection measures in waters of the United States, including wetlands, pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. **Emergency situations are described as sudden, unexpected occurrences that would potentially result in an unacceptable hazard to life or a significant loss of property if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures.**

Current procedures to be followed in the event of an alleged emergency require the Corps to determine if a particular situation constitutes an emergency as defined above. The District Engineer would explain

the circumstances and recommend special procedures to the Division Engineer who would then instruct the District Engineer as to further processing of the application. Reasonable efforts would be made to receive comments from interested Federal, State, and local agencies and the affected public. These measures are usually accomplished within 24 hours of receiving the request. Notice of any special procedures authorized and their rationale would be appropriately published as soon as practicable, if applicable, or other appropriate procedures as called for in regulations would be conducted after-the-fact. Further coordination would be conducted with other agency personnel unless that agency has already indicated to the Corps that notification for a particular class of projects or projects within particular geographic areas was unnecessary. For the activities covered, the above procedures would be superceded by the procedures outlined herein if this RGP is issued.

Additional Project Information: The proposed RGP would be limited to sudden, unexpected situations that could potentially result in an unacceptable hazard to life or a significant loss of property if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures. Examples of work anticipated for emergency authorization under this RGP include: placement of rip-rap for bank stabilization or bridge pier or abutment reinforcement, construction of earthen berms for flow control, actions to repair or protect existing structures. Construction of temporary access roads, cofferdams or other temporary water diversion fill associated with the above activities would also be authorized. This list is not inclusive and other activities may be authorized if the Corps determines they are appropriate for the situation. It is not anticipated that this RGP would be used to authorize channelization of watercourses.

The proposed RGP is not intended to address maintenance of channels or other projects in anticipation of a *potential* need. Other procedures are currently in place to address such concerns or the project proponent may apply for other Department of the Army authorization, such as standard or other general permits already established. In addition, pursuant to 33 CFR Part 323.4(a)(2), the discharge of

dredged or fill material that may result from the following activities is not prohibited by or otherwise subject to regulation under Section 404:

"Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption." In addition, regulations at 33 CFR Part 323.4(c) state "[a]ny discharge of dredged or fill material into waters of the United States incidental to. . ." such maintenance activities. . . "must have a permit if it is part of an activity whose purpose is to convert an area of the waters of the United States into a use to which it was not previously subject, where the flow or circulation of waters of the United States may be impaired or the reach of such waters reduced. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration." Further, note that activities conducted under this exemption may still be constrained by regulations of one or more other agencies unless the agency or agencies have established separate emergency or exemption procedures.

The proposed RGP does not in any way infringe upon the responsibilities of any other Federal, State or local agency that may have other jurisdictions that pertain to a particular action, nor does it obviate the need to acquire any other such approvals from other Federal, State or local agencies.

The need for mitigation for impacts to aquatic resources will be determined on a case-by-case basis. The Corps will strive to be fair and judicious in any such determination. We recognize that many of the project areas that may be considered for authorization under this RGP may already be extremely affected by high storm flows and imposition of mitigation in such situations may be unwarranted. However, this may not be true for all actions authorized under this RGP. If this is determined to be true of a particular situation,

the Corps, after discussion with other resource agencies and the applicant, will determine appropriate mitigation to replace impacted functions and values resulting from a specific project or group of projects within a defined geographic area.

Failure to comply with all applicable permit conditions or to demonstrate a "good faith" effort to comply with permit conditions prior to initiating the project will be considered a violation of Section 404 of the Clean Water Act. Resolution of enforcement actions may include restoration to pre-project conditions, or after-the-fact authorization of a project after achieving compliance with applicable permit terms and conditions, including those imposed by the State Water Resources Control Board or EPA pursuant to Section 401 of the Clean Water Act, and/or mitigation as determined to be appropriate. For situations where the District Engineer determines the unauthorized activity to be willful, repeated, flagrant, or of substantial impact, he may recommend criminal or civil actions to obtain penalties and refer the case to the local U.S. Attorney and/or to EPA.

E. PROPOSED GENERAL CONDITIONS: At this time, the Corps is proposing that all actions conducted under this RGP be subject to the following general conditions:

1. This RGP shall expire on August 31, 2001. [Further reauthorizations of this permit will hinge substantially on compliance with the RGP conditions, including the provision of after-project reports. Failure to comply with these conditions could result in the suspension or revocation of this permit prior to its expiration date, or its non-renewal.]

2. Notification:

(a) **Timing:** The applicant must notify the District Engineer as early as possible and shall not begin the activity until notified by the District Engineer that the activity may proceed under the RGP with any site specific special conditions imposed by the District or Division Engineer. The Corps recognizes there may be situations where imminent threat to life or property occur and the applicant has not received a notice to proceed from the District

Engineer. It is not the intention of this section to imply that one allow such threat to life or property result in actual loss. If one proceeds without such notice from the District Engineer, one must ensure that notice of such a unilateral decision to proceed is made to the Corps by telephone, facsimile, e-mail, delivered written notice or other alternative means to the appropriate Corps Regulatory Office. Such notice must include all of the information in General Condition 2(b), Items (1) - (4) below, as a minimum, with additional information to be provided after consideration of other General Conditions listed below.

(b) **Contents of Notification:** The notification should be in writing and include the following information:

- (1) The name, address and telephone numbers of the applicant, and the designated point of contact and their address and phone number;
- (2) The location of the proposed project in detail (This should include a copy of a USGS topo map, Thomas Guide map, or hand-drawn location map with suitable landmarks. The map should have enough detail to clearly indicate the location and the extent of the project, as well as detailed directions to the site.);
- (3) A brief, but clear, description of the imminent threat to life or property and the proposed project's purpose and need; and
- (4) A description of methods anticipated to be used to rectify the situation ("Field engineering" is not an adequate description. It is presumed if one mobilizes material and a particular piece of equipment to a site, the applicant probably has a fairly well defined intention for the material and equipment).

(c) **Form of Notification:** The standard individual permit application form (Form ENG 4345 available at the District's Website www.spn.usace.army.mil/regulatory/) may be used as the notification and must include all of the information required in General Condition 2(b), Items (1)-(4) above. A letter or facsimile transmission may also be used. In certain situations where there is an imminent threat to life or property and the applicant is unable to make direct contact with any Corps personnel, a message shall be left on voice mail, an e-mail message sent or a facsimile letter transmitted that includes the information required in General Condition 2(b), Items (1)-(4) above. Formal written notification shall be sent to the appropriate Corps Regulatory Office as soon as practicable.

(d) **District Engineer's Decision:** In reviewing the notification for the proposed activity, the District Engineer will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The applicant may, as an option, submit a proposed mitigation plan with the notification to expedite the process and the District Engineer will consider any mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the RGP and that the adverse effects are minimal, the District Engineer will notify the applicant and include any situation-specific conditions deemed necessary.

Mitigation proposals may be approved by the District Engineer after commencing work. If the applicant elects to submit a mitigation plan, the District Engineer will expeditiously review the proposed mitigation plan.

If the District Engineer determines that the adverse effects of the proposed work are more than minimal, he will notify the applicant either:

(1) that the project does not qualify for authorization under this RGP and instruct the applicant on the procedures to seek authorization under an individual permit; or (2) that the project is authorized under the RGP subject to the applicant's submitting a mitigation proposal that would reduce the adverse effects to the minimal level.

(e) **Agency Coordination:** The District Engineer will, upon receipt of a notification, provide immediately, by facsimile transmission, overnight mail or other expeditious manner, a copy to the appropriate offices of the F&WS, the NMFS, the EPA, the California Department of Fish and Game (F&G), the RWQCB, the CCC, the BCDC, the National Marine Sanctuary and the SHPO, as appropriate. These agencies will be requested to telephone or fax the District Engineer (c/o the Regulatory project manager), as expeditiously as possible, with notice as to whether they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will allow them to provide their comments in a short timeframe determined by the Corps on a case-by-case basis to not likely result in loss of life or property before making a decision on the notification.

The District Engineer will fully consider any comments from Federal and State agencies, received within the specified time frame, concerning the proposed activity's compliance with the terms and conditions and the need for mitigation to reduce the project's adverse environmental effects to a minimal level. The District Engineer will fully consider agency comments and will so indicate in the administrative record associated with each notification, but will provide no formal response to the resource agency comments.

(f) **Mitigation:** Factors that the District Engineer will consider when determining the acceptability of appropriate and practicable mitigation include, but are not limited to:

- (1) The approximate functions and values of the aquatic resource being impacted, such as habitat value, aquifer recharge, sediment conveyance or retention, flood storage, etc.;
- (2) The permanence of the project's impacts on the resource; and
- (3) The potential long-term effects of the action on remaining functions and values of the aquatic resource.

To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes.

To the extent appropriate, applicants should consider mitigation banking and other forms of mitigation, including contributions to wetland trust funds, "in-lieu fees" to organizations such as The Nature Conservancy, or State or county natural resource management agencies, where such fees contribute to the restoration, creation, replacement, enhancement, or preservation of aquatic resources.

In addition, mitigation must address aquatic resource impacts to functions and values such as habitat values, aquifer recharge, sediment conveyance or retention, flood storage, etc. Examples of mitigation that may be appropriate and practicable include but are not limited to: reducing the size of the project; establishing wetland or upland buffer zones to protect aquatic resource values; replacing the loss of aquatic resource values by creating, restoring, and enhancing similar functions and values; or use of bioremediation techniques in conjunction with other methods to offset project impacts.

Discharges of dredged or fill material into waters of the United States must be minimized or avoided to the maximum extent practicable at the project site. Every effort must be made to ensure any material dredged or excavated

from a waters of the United States is not likely to be washed back into any waters of the United States.

3. Any work authorized under this RGP must be the minimum necessary to alleviate the immediate emergency, unless complete reconstruction does not result in significantly increased impacts to aquatic resources and logistical concerns indicate such reconstruction is as expedient considering the condition of the project site, and is limited to in-kind replacement or refurbishment, or moderate upgrading if the applicant wishes to use bioremediation or other environmentally sensitive solutions. For example, it may be determined that reconstruction of a bridge crossing or roadway damaged by flood flows is a more appropriate course of action than simple shoring up of the facility to allow an immediate return to use. When continued public safety is an issue, such reconstruction will remain a viable option for consideration of authorization under this RGP. This RGP may not be used to upgrade to any existing standard that results in additional adverse effects on aquatic resources, except in very limited circumstances. Such projects are normally separate projects for which other forms of authorization will be required.

4. Any projects authorized under this RGP must be initiated within seven (7) days of receiving authorization to proceed. [Projects that cannot be initiated within an immediate timeframe would not meet the definition of "emergency". If the project cannot be conducted for a longer period of time, the imminent threat of impending loss is likely to have diminished in magnitude as well as immediacy. On the other hand, this RGP could be used to authorize projects, as they become discovered, such as with the receding flows of a river substantially after a flood event occurred and which likely was the immediate cause of the damage. Further, this RGP cannot be used to authorize long-planned-for projects, nor shall it be used for projects that are likely to have been known by the applicant but for which an application was not submitted for a period of months until the next wet season is upon us. That is, the applicant's failure to act in a timely manner prior to the season will not obligate the Corps or other agencies to authorize work under an emergency authorization.]

5. The applicant shall provide a written report to the Corps as soon as practicable (preferably within 45 days of the completion of the project) after completion of any emergency action conducted under this RGP. **PROVISION OF THIS REPORT IS MANDATORY.** The Corps has additional responsibilities pursuant to consultation with the F&WS and/or the NMFS under Section 7 of the ESA. Further, it enables us to track the use of this RGP for determination of minimal cumulative effects as required under Section 404(e) of the Clean Water Act. Failure to provide timely reports following responses to emergency situations is non-compliance with permit conditions and would be considered a violation (33 CFR Part 326.4(d)). If there are a substantial number of projects and this requirement would consume substantial quantities of an applicant's staff resources, the applicant could optionally submit a comprehensive report providing all of the information required in the notification condition above. The report(s) shall include a description of the emergency and the potential for loss of life or property, maps to the project location, pre- (if possible) and post-construction photographs, quantities of material used (as applicable), and areal and lineal extent of the project. If the project was conducted within an area known to harbor Federally listed or proposed species, or designated or proposed critical habitat, the applicant shall also provide a copy of the report to the F&WS and/or the NMFS, as appropriate. If mitigation is determined to be appropriate for any particular project or group of projects, a mitigation proposal must be submitted to the Corps for review and approval; the Corps would forward the report to appropriate agencies for their review and comment.

6. Navigation: No activity may cause more than a minimal adverse effect on the course or capacity of a navigable water.

7. Proper Maintenance: Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety, unless it is later determined that the structure is further contributing to other adverse conditions to private or public property.

In such situations, corrective measures will be taken to rectify these adverse conditions, including removal and/or redesign of the original emergency corrective

action, or appropriate mitigation as determined through coordination with the applicant and the appropriate Federal and State resource agencies. Temporary levees constructed to control flows shall not be maintained beyond the current storm season; that is, maintenance of temporary levees shall not be authorized after the storm season within which the need arose.

8. Erosion and Siltation Controls: When feasible, erosion and siltation controls, such as siltation or turbidity curtains, sedimentation basins, and/or hay bales or other means designed to minimize turbidity in the watercourse above background levels existing at the time of construction, shall be used and maintained in effective operating condition during construction unless conditions preclude their use, or if conditions are such that the proposed work would not increase turbidity levels above the background level existing at the time of the work. All exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be stabilized at the earliest practicable date to preclude additional damage to the project area through erosion or siltation.

9. Aquatic Life Movements: No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species, which normally migrate through the area.

10. Equipment: When feasible, and if personnel would not be put into any additional potential hazard, heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

11. Regional and Case-by-Case Conditions: The activity must comply with any regional conditions which may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the RWQCB or the EPA in its Section 401 water quality certification, or by the CCC or BCDC in its determination of consistency with the State's CZMP.

12. Wild and Scenic Rivers: No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress

as a “study river” for possible inclusion in the system, while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for the river has determined in writing that the proposed activity would not adversely effect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, F&WS)

13. Tribal Rights: No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

14. Water Quality Certification: An individual Section 401 water quality certification must be obtained unless general Section 401 certifications are issued or waived for this RGP in the project area (see 33 CFR 330.4(c)).

15. Coastal Zone Management: An individual State coastal zone management consistency concurrence must be obtained or waived where the project may affect the Coastal Zone unless general concurrences are issued or waived for this RGP in the project area (see 33 CFR 330.4(d)).

16. Endangered Species:

- (a) Applicants shall notify the District Engineer if any listed or proposed species or designated critical habitat might be affected by or is in the vicinity of the project, and shall not begin work on the activity until notified by the District Engineer that the requirements of the ESA have been satisfied and that the activity is authorized, unless there is imminent threat to life or property and the applicant has not received notice from the District Engineer. In all circumstances, the applicant should, if aware of the potential presence of a listed species or designated critical habitat, make considerable efforts to contact the Corps and/or personnel at USFWS and/or NMFS. In some cases, the FWS and NMFS may be able to make *a priori* determinations that listed species are not present.

- (b) Authorization of an activity by this RGP does not authorize the “take” of a listed or proposed threatened or endangered species, or the destruction or adverse modification of designated or proposed critical habitat as defined under the Federal ESA unless the applicant has fulfilled their requirements for emergency consultation, pursuant to Section 7 of the ESA, as described in the **Endangered Species** portion of this RGP. In the absence of emergency consultation through the Corps or separate or programmatic authorization (an approved Section 10(a)(1)(B) permit or a completed biological opinion) from the FW&S or NMFS, both lethal and non-lethal takings of listed species are prohibited by Section 9 of the ESA. Information on the location of listed or proposed threatened and endangered species and their designated or proposed critical habitat can be obtained directly from the F&WS and the NMFS or from their world wide web pages at

<http://www.fws.gov/r9endspp/endspp.html>
(for Endangered Species) and

http://www.nmfs.gov/prot_res/esahome.html
(for Recovery).

To the extent possible, the Corps will implement any programmatic biological opinions and incidental take statements that may be available. Any terms and conditions inherent with these documents will become conditions on a particular action’s utilization of this RGP.

In many cases, information on the presence of listed and proposed species at a specific project site may not be available. In such cases, the nature of the emergency may prevent an applicant from conducting the surveys necessary to make a reasonable determination. Therefore, the applicant may assume the species is present, if suitable habitat occurs onsite, and request that emergency provisions of Section 7 of the ESA be implemented.

17. **Historic Properties:** Impacts to historic properties listed, proposed for listing, or potentially eligible for listing on the National Register of Historic Places will be avoided to the maximum extent practicable. If such resources are impacted as a result of actions authorized under this RGP, the applicant shall provide a full report of the action and the impacts incurred by the resource to the Corps within 45 days after completion of the action. The Corps, SHPO and/or Advisory Council for Historic Preservation will then jointly make a determination as to appropriate procedures and/or mitigation to be addressed.

18. **Water Supply Intakes:** No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structures or adjacent bank stabilization.

19. **Shellfish Production:** No discharge of dredged or fill material may occur in areas of concentrated natural or commercial shellfish production, unless the discharge is directly related to a shellfish harvesting activity authorized by the Corps' Nationwide Permit (NWP) 4.

20. **Suitable Material:** No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

21. **Spawning Areas:** Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.

22. **Obstruction of High Flows:** To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water except within the existing riverplain (unless the primary purpose of the fill is to impound waters).

23. **Adverse Effects From Impoundments:** If the discharge creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

24. **Waterfowl Breeding Areas:** Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

25. **Removal of Temporary Fills:** If deemed necessary, temporary fills shall be removed in their entirety and the affected areas returned to their preexisting elevation and revegetated with appropriate native riparian or wetland vegetation common to the area. If an area impacted by such temporary fill is considered likely to naturally reestablish native riparian or wetland vegetation within two years to a level similar to pre-project or pre-event conditions, the applicant will not be required to do so.

F. REQUEST FOR ADDITIONAL INFORMATION FROM THE AGENCIES: To ensure that proper coordination the resource agencies is done efficiently, the Corps is requesting that each agency which wishes to review projects submitted for approval under this RGP provide the following:

Maps (8-1/2" X 11") showing the geographical extent of your authority/responsibility

A list of phone and faximile numbers where project information should be sent

A list of personnel and phone numbers if specific people are to be contacted for specific geographic areas or specific areas of responsibility

Agency mailing and street, if different, addresses.

We have provided a map of our District boundaries which will define the area where this RGP will be applied to aid you in identifying the appropriate information we are seeking.

CORPS OF ENGINEERS DISTRICTS

State of California

U.S. Army Corps of Engineers
Sacramento District
1325 'J' Street
Sacramento CA 95814-2922
Phone # (916) 557-7490

San Francisco District
333 Market Street
San Francisco CA 94105
-2197
Phone # (415) 977-8462

LOS ANGELES DISTRICT
P.O. Box 2711
Los Angeles, CA 90053
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